

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

FRANKIE LEE TILLMAN, #325966,

Petitioner,

v.

2:05CV631

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on July 18, 2003, in the Circuit Court for the City of Alexandria, Virginia, for statutory burglary and felony petit larceny, as a result of which he was sentenced to serve five years and four months in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 29 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge filed his report recommending dismissal of the petition on April 19, 2006. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. Instead, on May 1, 2006, petitioner filed a motion to withdraw his petition in order to exhaust his available state court remedies.

Petitioner's motion to withdraw is MOOT. On January 18, 2006, petitioner filed a motion to amend his petition to exclude the ineffective assistance of counsel claim because the claim had never been presented to the state courts. Petitioner indicated his desire for the Court to proceed

with the three remaining exhausted claims. Accordingly, respondent was directed to answer the exhausted claims, and upon receipt of the answer, the Magistrate Judge prepared the report and recommendation. Petitioner is not now entitled to have the petition withdrawn.

Since no objections to the Magistrate Judge's Report and Recommendation have been received, and the time for filing same has expired, the Court does hereby accept the findings and recommendations set forth in the report filed April 19, 2006. Therefore, it is ORDERED that the petition be DENIED and DISMISSED on the merits and that judgment be entered in respondent's favor.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment. Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right." Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to petitioner and to counsel of record for respondent.

\_\_\_\_\_/s/\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

**Norfolk, Virginia**

**May 4, 2006**